

# **The right of superficies and its comparison to Austrian law**

## **Abstract**

This thesis describes the right of superficies that was adopted into the Czech legal system by the Act Nr. 89/2012 Sb., Civil Code and compares it with the Austrian right of superficies adopted by Act Nr. 86/1912. The objective of the thesis is to describe the key attributes of the right of superficies according to Czech law and to compare it with the corresponding provisions of the Austrian law. The thesis also deals with provisions of the Czech right of superficies that may be unclear or problematic to interpret and offers the possible way in which these provisions could be interpreted by drawing upon the example of the Austrian right of superficies. The thesis also contains the evaluation of the Czech right of superficies and some ideas for improvement of some its provisions. The right of superficies is described according to Czech and Austrian law in each chapter separately to aid the comprehensibility of the thesis and each chapter also contains the comparison of the concrete attributes of the Czech and Austrian right of superficies, respectively. Analytic, synthetic and comparative methodologies are used in this thesis. The introduction contains a brief historic development of the right of superficies and of the principle *superficies solo cedit* within the territory of the Czech Republic. The following chapter defines the essence and nature of the right of superficies and its characteristic attributes. The thesis continues by describing the constitution of the right of superficies, the tract of land that could be encumbered with the right of superficies and the structure that is the component part of the right of superficies. The subsequent chapter deals with the consideration for the right of the superficies and its most common form – a superficies payment. The thesis also further defines rights and obligations of the parties, the builder and the owner of the tract of land. The description of the right of superficies and its consequences is also included. The last part of the thesis summarizes the thesis and evaluates the Czech right of superficies by reflecting upon the similar law of superficies and its continual development in the Austrian law. Considerations regarding *de lege ferenda* are made, following which thoughts and ideas for the potential amendment of the Czech right of superficies are offered.